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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 DARNELL MCGARY,

11 Petitioner,

12 v.

13 DR. HENRY RICHARDS,

14 Respondent.

Case No. C06-5086RJB

ORDER DIRECTING CLERK  
TO  
DISMISS PETITION WITHOUT  
PREJUDICE

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16 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C.  
17 § 636(b)(1)(B). This matter comes before the Court upon plaintiff's motion to dismiss his petition  
18 for writ of *habeas corpus*. (Dkt. #7). After reviewing plaintiff's motion and the record, the Court  
19 does hereby find and ORDER:

20 Under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41(a), a plaintiff has the right to  
21 voluntarily dismiss his case without order of the Court when no answer or motion for summary  
22 judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a  
23 matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment.

24 Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

25 Petitioner requests dismissal after the Court issued an order to amend his petition or show cause  
26 why the matter should not be summarily dismissed (Dkt. #6). In its order the Court explained that  
27 petitioner had failed to exhaust his state court remedies, and directed him to file an amended petition by  
28 April 10, 2006, or show cause why his petition should not be dismissed. Procedurally in this case,

1 respondent has not yet been served with the petition. Accordingly, pursuant to Fed. R. Civ. P. 41(a)(1),  
2 plaintiff's motion to dismiss his petition (Dkt. #7) hereby is GRANTED.

3 The Clerk is directed to dismiss petitioner's petition without prejudice and to send a copy of  
4 this Order to petitioner.

5 DATED this 10th day of April, 2006.

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9 Karen L. Strombom  
10 United States Magistrate Judge  
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